

DD/A Registry

78-041113

OLC 78-1039/1

17 March 1978

MEMORANDUM FOR: John F. Blake
Deputy Director for Administration

STATINTL

THROUGH:

[REDACTED]
Associate Director-Management/NFAC

[REDACTED]
Deputy Director of Personnel

STATINTL

FROM:

[REDACTED]
Assistant Legislative Counsel

STATINTL

SUBJECT: Authority for Training of Certain Employees

REFERENCE: Memorandum from Acting Director of Personnel,
Same Subject, dated 7 March 1978

1. The suggestion by the Office of Personnel that we should seek to obtain statutory authority to provide training or education for certain employees whose employment is terminated for certain purposes has merit. As a matter of fact, this office has been considering just such a proposal; a paper providing possible statutory language is attached.

2. The intelligence charter legislation--S. 2525/H.R. 11245--certainly would be an appropriate vehicle for such a proposal. We are just now finalizing an issues paper on Title IV (the Agency charter), and will consider the training proposal in that context. Yet another possibility would be to consider including this sort of provision in an authorization bill, since we will now be subject to the authorization procedures. We will stay in touch with all concerned Agency components on this matter.

[REDACTED]
STATINTL

Attachment

LEGISLATION TO PROVIDE TRAINING FOR
CERTAIN PERSONNEL SEPARATED FROM THE
CENTRAL INTELLIGENCE AGENCY BY THE
DIRECTOR OF CENTRAL INTELLIGENCE

Certain employees of the Central Intelligence Agency, because of the unique mission and requirements of the Agency, are at a serious disadvantage in seeking private employment once their careers with the Agency have ended. In many cases, these employees possess job skills which are not readily marketable outside the Agency. Other employees are in a difficult position because security considerations prohibit their presenting an accurate picture of their job experiences and capabilities. The legislation proposed below would make these employees of the Central Intelligence Agency eligible, under certain conditions, for up to the full-time equivalent of two years of training in order to make them competitive with job seekers outside the Agency. Among the conditions for eligibility are that the person's employment is terminated by the Agency for reasons, such as a reduction in force, which do not reflect unfavorably on performance and that the employee not be immediately eligible for retirement.

The Central Intelligence Agency, like the Civil Service and the military, has the authority to make separation payments to some employees. The purpose of those payments is to help the former employee relocate following termination, generally involuntary, of his career in Government or the military and to ease the transition into a new job. The purpose of the training permitted by the language proposed below is different -- to assist employees in developing a skill which will enable them to make the transition to other employment.

The proposed language is as follows:

"(a) An employee with five years of service with the Central Intelligence Agency whose employment is to be terminated, other than for cause on charges of misconduct, delinquency or inefficiency, may receive not more than the full-time equivalent of two years of training if

(1) the Director of Central Intelligence determines that the employee is at a disadvantage in finding new employment because the nature, circumstance or security requirements of the employee's service are clearly distinguishable from normal Government employment; and

(2) the employee does not qualify for immediate retirement benefits.

(b) During the period of training under this section, the employee shall be --

(1) retained at his last assigned grade and rate of pay;

(2) entitled to each increase in rate of pay provided by law or regulation; and

(3) excluded from staffing limitations otherwise applicable.

(c) The Director of Central Intelligence shall prescribe such regulations as necessary to carry out this section."

5 U.S.C. section 3381 provides a precedent for this type of payment in the case of air traffic controllers. Like the Central Intelligence Agency employees who would be covered by this proposed legislation, air traffic controllers have a job skill which is not readily marketable outside the Federal Aviation Administration. They are thus provided with training once they can no longer perform the duties of an air traffic controller.

EXECUTIVE ORDER NO. 11553

Apr. 1, 1971, 28 P.R. 6243

DELEGATION OF FUNCTIONS TO CIVIL SERVICE COMMISSION

By virtue of the authority vested in me by section 301 of title 3 of the United States Code [section 301 of Title 3, The President], and as President of the United States, it is ordered as follows:

Section 1. The United States Civil Service Commission is hereby designated and empowered to exercise, without the approval, ratification, or other action of the President, the following:

(a) The authority of the President under section 2376 of title 5 of the United States Code [this section] to prescribe regulations for the administration of subchapter VI, "Assignments to and from States," of chapter 33 of that title [this chapter].

(b) The authority of the President under section 203(a) (4) of the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2233(a) (4)) [section 203(a) (4) of Title 50, Appendix, War and National Defense], and as affected by Reorganization Plan No. 1 of 1953 (72 Stat. 1759) [set out in the Appendix to this title], relating to personnel standards on the merit basis.

Sec. 2. To the extent that section 1(b) of this order is inconsistent with the provisions of Executive Order No. 11552 of July 29, 1971, as amended [set out as a note under section 2271 of Title 50, Appendix, War and National Defense], section 1(b) shall control.

RICHARD NIXON

SUBCHAPTER VII—AIR TRAFFIC CONTROLLERS

§ 3381. Training

(2) An air traffic controller with 5 years of service as a controller who is to be removed as a controller because the Secretary of Transportation has determined—

- (1) he is medically disqualified for duties as a controller;
- (2) he is unable to maintain technical proficiency as a controller;

or

(3) such removal is necessary for the preservation of the physical or mental health of the controller;

is entitled to not more than the full-time equivalent of 2 years of training.

(b) During a period of training under this section, a controller shall be—

- (1) retained at his last assigned grade and rate of basic pay as a controller;
- (2) entitled to each increase in rate of basic pay provided under law; and
- (3) excluded from staffing limitations otherwise applicable.

(c) Upon completion of training under this section, a controller may be—

- (1) assigned to other duties in the Department of Transportation;
- (2) released for transfer to another Executive agency; or
- (3) involuntarily separated from the service.

The involuntary separation of a controller under this subsection is not a removal for cause on charges of misconduct, delinquency, or inefficiency for purposes of section 5535 or section 8335 of this title.

(d) The Secretary, without regard to section 529 of title 31, may pay, or reimburse a controller for, all or part of the necessary expenses of training provided under this section, including expenses authorized to be paid under chapter 41 and subchapter I of chapter 57 of this title, and the costs of other services or facilities directly related to the training of a controller.

(e) Except as provided by subsection (d) of this section, the provisions of chapter 41 of this title, other than sections 4105(a), 4107(a) and (b), and 4111, shall not apply to training under this section.

(f) The provisions of this section shall not otherwise affect the authority of the Secretary to provide training under chapter 41 of this title or under any other provision of law.

Added Pub.L. 92-297, § 3(a), May 16, 1972, 86 Stat. 142.

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Effective Date. Section 10 of Pub.L. 92-297 provided that: "This Act [enacting this subchapter and section 2153 of this title, amending sections 3307, 8332, 831 to 8336, 8339, 8341, 8344 of this title, enacting provisions set out as notes under this section and section 8335 of this title, and repealing provisions set out as a note under section 3307 of this title] shall become effective at the beginning of the ninetieth day after the date of enactment of this Act [May 16, 1972]."

Report to Congress. Section 9 of Pub.L. 92-297 provided that: "The Secretary of Transportation shall make a report to Congress of his operations under the amendments made by this Act [enacting this subchapter and section 2103 of this title, amending sections 3307, 8332, 8334 to 8339, 8339, 8341, 8344 of this title, enacting

provisions of this section and repealing provisions of this section] under section 3307 of this title, shall include effectiveness needs of the program and system, and the Secretary shall make his report after the [May 16, 1972]."

Legislation history and 1972 U.S.C. 2287.

§ 3382. Involuntary separation for retirement

An air traffic controller who is eligible for retirement under section 8336 of this title may be separated from service if the Secretary of Transportation determines that separation is necessary in the interest of—

- (1) aviation safety;
- (2) the efficient control of air traffic;
- (3) the preservation of the physical condition of the controller.

Chapter 75 of this title does not apply to a controller under this section. Separation under this section shall be without the consent of the controller, until the last day of the month following the day the controller receives a notification by the Secretary under this section, or, if section 3323 of this title, the last day of the month of the notification, whichever is later. A controller who is to be separated is entitled to training under section 3381 of this title. A controller who elects to receive training under this section shall become final until the last day of the month of his training.

Added Pub.L. 92-297, § 3(a), May 16, 1972.

Effective Date. Section effective on the 10th day after May 16, 1972, see section 2153 of this title.

§ 3383. Determinations; review procedure

(a) An air traffic controller subject to a determination by the Secretary of Transportation under section 3381(a) shall be furnished a written notice of the determination, and a notification that the controller may request a review of the determination within which to file a request for consideration of the determination. Unless the controller requests a review within the 15 days, the determination shall be final.

(b) If the Secretary does not rescind his determination under section (a) of this section, the Secretary shall refer the matter to a board of review, consisting of—

- (1) a person designated by the controller;
- (2) a representative of the Department of Transportation designated by the Secretary; and
- (3) a representative of the Civil Service Commission designated by the Chairman, who shall serve as chair of the board.

(c) The board of review shall review evidence submitted by the controller in support of his request for review of the determination of the Secretary.

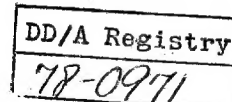
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7 MAR 1978

MEMORANDUM FOR: Director of Central Intelligence

STATINTL

FROM:

██████████
Acting Director of Personnel

SUBJECT:

Authority for Training or Education of
Certain Employees

1. Action Requested. That the Agency seek to incorporate into the pending charter legislation, S-2525, authority to expend appropriated funds for the training or education of employees whose employment is terminated for the convenience of the Agency and who must continue to work elsewhere but whose service with the Agency has not provided them with marketable skills or has not enabled them to keep once-marketable skills up to date.

2. Background. Some Agency employees whose employment is terminated for the convenience of the Agency have spent years developing skills that may not be marketable elsewhere in Government or in private business. As a result, if they have to continue working, they find that they are at a distinct disadvantage in competing for other employment. This includes people who were recruited by the Agency at a young age before they had the opportunity to acquire other skills and those who had significant skills but whose skills became obsolescent as a result of unique Agency service. In both instances, these employees developed their highest skill levels in fields peculiar to the Agency with no ready transferability to the civilian market place.

The Agency has, at various times, been concerned with this problem. In 1965, the Director of Personnel asked the Office of General Counsel for an opinion as to the legality and propriety of expending funds to train or educate prospective retirees in order to improve their qualifications for other employment. The opinion stated that such a program might be authorized under the Director's authority under Section 102(c) of the National Security Act of 1947 and Section 8 of the CIA Act of 1949 if it was based on security considerations and limited in scope.

In 1977, because of the DDO personnel reductions, we asked OGC to re-examine the earlier opinion in terms of "retooling" resignees or early retirees. OGC stated that such a program would not be supportable

under the legal authorities discussed in the earlier opinion. At most, those authorities could be relied on to justify expenditures on a case-by-case basis, taking into account the special and individualized circumstances of the employee(s) involved. It was OGC's recommendation that a specific appropriation be sought to give the Agency a standing authority to approve such training.

We have looked elsewhere in government to see if other departments or agencies have such authority. We find that, except for FAA, they do not. The Federal Aviation Administration had specific legislation enacted for this purpose in 1972. The FAA bill provides that the Secretary of Transportation may provide up to two years of training to assist air traffic controllers in qualifying for other employment if they must be removed from their duties because of medical disqualification, or removal is required to protect the physical and mental well-being of the controllers, or if they are unable to maintain their technical proficiency.

3. Staff Position. We believe the Agency should have clear authority to provide training to employees whose careers are terminated for the convenience of the Agency and who either have no marketable skills or whose marketable skills are obsolescent, and that specific legislation be sought for this purpose.

A minimum of 10 years of experience in skills peculiar to the Agency is suggested as a prerequisite to the approval of retraining or re-education. Because such a program would facilitate necessary terminations or encourage voluntary attrition, it would serve an important management purpose. Such a program would also discharge a humane obligation to assist loyal and dedicated employees to qualify themselves so as to be able to pursue their livelihood elsewhere.

This program would apply to Agency employees of any component or career service and in either retirement system. The receipt of an annuity would not necessarily be a bar to such training but would be an important factor considered in any approval. Only those who must continue to work would be eligible. Training would not be given for personal growth, cultural enrichment or the pursuit of hobbies, and would have to have some relationship to the person's background or aptitudes, relevance to the job market, a clear connection to reasonable employment objectives and a reasonable expectation that the training actually would assist in qualifying the person for employment in a field related to the training.

The matter of an annuity in relation to approval for such training would be considered in the context of the person's goals, circumstances and responsibilities. A person who, for example, is single, whose employment is terminated and who will receive an annuity of \$18,000 is a case quite different from that of a married person with the same annuity but having four children, even though both persons may indicate a need to continue working.

We would have to devise a system for the receipt and review of requests for training and for the approval and monitoring of such training. At the present time we envision that the career services would either nominate employees to receive this type of training or would make recommendations on employees' requests for training. A special board would be established to review and approve requests. Board membership should consist of representatives from each Directorate and from the Office of Training with the Board chaired by the Director of Personnel or his designee. Representatives from OGC, Central Cover Staff and the Office of Security would act as advisors. Once training was approved, the Office of Training would assume responsibility for monitoring the training to ensure that the person actually enrolls and continues in training and performs at a satisfactory level and that the training objectives are being met.

4. Recommendation. That you authorize the Office of Personnel, in conjunction with the Offices of Legislative Counsel and General Counsel to initiate an amendment to the pending legislation to provide for this special training authority.

 STATINTL

APPROVE: _____

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DDA Registry
File Training

Authority for Training or Education of Certain Employees

John F. Blake
Deputy Director for Administration
7D24, Hqs.

DDA 78-0971/1

13 MAR 1978

Associate Director of
NFAC for Management

Paul:

The Office of Personnel has proposed in the attached memorandum that we seek to incorporate in the pending charter legislation authority to use appropriated funds to train employees terminated for Agency convenience and left without marketable skills. The proposal has merit, and I believe it should be included in our proposals for modification of the Senate proposal S.2525. I am not submitting the memorandum to the Director as proposed by the Office of Personnel, but I am routing a copy of this to him to let him know that we will be proposing this to the SSCI staff.

/s/ Jack Blake

John F. Blake

Att: a/s

cc: OLC
OP

STATINTL

AI/DDA [redacted] ydc (9 Mar 78)

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